

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

FILED

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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

4 In the Matter of:)

5 BAE Systems Information and)
6 Electronic Systems)
7 Integration, Inc.,)

Respondent.)

Docket No. EPCRA-09-2008- 0025

CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R.
§§ 22.13 AND 22.18

9 I. CONSENT AGREEMENT

10 1. The Director of the Communities and Ecosystems Division
11 ("Complainant"), United States Environmental Protection
12 Agency ("EPA") Region 9, and BAE Systems Information and
13 Electronic Systems Integration, Inc. ("Respondent" or "BAE
14 Systems") agree to settle this matter and consent to the
15 filing of this Consent Agreement and Final Order Pursuant to
16 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"), which simultaneously
17 commences and concludes this matter in accordance with 40
18 C.F.R. §§ 22.13(b) and 22.18(b).

19 2. This is a civil administrative proceeding initiated pursuant
20 to Section 325(c) of Title III of the Superfund Amendments
21 and Reauthorization Act, 42 U.S.C. § 11001 et seq., also
22 known as the Emergency Planning and Community Right-to-Know
23 Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA,
24 42 U.S.C. § 11023, and the regulations promulgated to
25 implement Section 313 at 40 C.F.R. Part 372.

26 3. Complainant has been duly delegated the authority to file
27 this action and sign a consent agreement settling this
28 action. Respondent is a corporation incorporated in

1 Delaware.

2 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023
3 and 11048, EPA promulgated the Toxic Chemical Release
4 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part
5 372.

6 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.
7 § 372.30, provides that an owner or operator of a facility
8 that meets the criteria set forth in EPCRA Section 313(b) and
9 40 C.F.R. § 372.22, is required to submit annually to the
10 Administrator of EPA and to the State in which the facility
11 is located, no later than July 1st of each year, a toxic
12 chemical release inventory reporting form (hereinafter "Form
13 R") for each toxic chemical listed under 40 C.F.R. § 372.65
14 that was manufactured, processed or otherwise used at the
15 facility during the preceding calendar year in quantities
16 exceeding the thresholds established under EPCRA Section
17 313(f) and 40 C.F.R. §§ 372.25, 375.27, and 372.28.

18 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that
19 the requirements of Section 313(a) and 40 C.F.R. § 372.30
20 apply to an owner and operator of a facility that has 10 or
21 more full-time employees; that is in a Standard Industrial
22 Classification major group codes 10 (except 1011, 1081, and
23 1094), 12 (except 1241), 20 through 39; industry codes 4911,
24 4931, or 4939 (limited to facilities that combust coal and/or
25 oil for the purpose of generating power for distribution in
26 commerce), or 4953 (limited to facilities regulated under the
27

1 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.
2 §6921 *et seq.*), or 5169, 5171, or 7389 (limited to facilities
3 primarily engaged in solvent recovery services on a contract
4 or fee basis); and that manufactures, processes, or otherwise
5 uses one or more toxic chemicals listed under Section 313(c)
6 of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of
7 the applicable thresholds established under EPCRA Section
8 313(f) and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

9 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
10 Part 19 authorize EPA to assess a penalty of up to \$27,500
11 for each violation of Section 313 of EPCRA that occurred on
12 or after January 31, 1997, but before March 15, 2004, and up
13 to \$32,500 for each violation of Section 313 of EPCRA that
14 occurred on or after March 15, 2004.

15 8. Respondent is a "person," as that term is defined by Section
16 329(7) of EPCRA.

17 9. At all times relevant to this CAFO, Respondent was the owner
18 and operator of a "facility," as that term is defined by
19 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at
20 1501 Sabovitch Street - Building 66, Mojave, California
21 ("Facility"); the Facility had 10 or more "full-time
22 employees" as that term is defined at 40 C.F.R. § 372.3; and
23 the Facility was classified in Standard Industrial
24 Classification Code 3728, Aircraft Parts and Auxiliary
25 Equipment, not elsewhere classified.

26 10. During calendar years 2003 and 2005, Respondent processed the
27
28

1 following amounts (in pounds) of lead, a chemical listed
2 under 40 C.F.R. § 372.28(a)(1):

3 <u>Year</u>	<u>lead</u>
4 2003	5,000
5 2005	5,000

- 6 11. The quantities of lead that the Respondent processed at the
7 Facility during calendar years 2003 and 2005 exceeded the
8 established threshold of 100 pounds set forth at 40 C.F.R. §
9 372.28(a)(1).
- 10 12. Respondent failed to submit Form Rs for lead processed at the
11 Facility to the EPA Administrator and to the State of
12 California on or before July 1, 2004, for calendar year 2003,
13 and to the EPA Administrator and to the State of California
14 on or before July 3, 2006, for calendar year 2005, as
15 required by Section 313(a) of EPCRA and 40 C.F.R. § 372.30.
- 16 13. Respondent's failure to submit Form Rs for lead processed at
17 the Facility for calendar years 2003 and 2005 constitute two
18 violations of Section 313 of EPCRA and 40 C.F.R. § 372.30.
- 19 14. The EPA Enforcement Response Policy for EPCRA Section 313
20 dated August 10, 1992, provides for a penalty of sixty-one
21 thousand dollars (\$61,000) for these violations.
- 22 15. In executing this CAFO, Respondent certifies that (1) it has
23 now fully completed and submitted to EPA all of the required
24 Form Rs in compliance with Section 313 of EPCRA and the
25 regulations promulgated to implement Section 313; and (2) it
26 has complied with all other EPCRA requirements at all
27 facilities under its control.

1 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
2 purpose of this proceeding, Respondent (i) admits that EPA
3 has jurisdiction over the subject matter of this CAFO and
4 over Respondent; (ii) admits the violations and facts alleged
5 in this CAFO; (iii) consents to the terms of this CAFO; (iv)
6 waives any right to contest the allegations in this CAFO; and
7 (v) waives the right to appeal the proposed final order
8 contained in this CAFO.

9 17. The terms of this CAFO constitute a full settlement of the
10 civil administrative matter filed under the docket number
11 above.

12 18. EPA's final policy statement on Incentives for Self-Policing:
13 Discovery, Disclosure, Correction and Prevention of
14 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit
15 Policy") has several important goals, including encouraging
16 greater compliance with the laws and regulations which
17 protect human health and the environment and reducing
18 transaction costs associated with violations of the laws EPA
19 is charged with administering. If certain specified criteria
20 are met, reductions in gravity-based penalties of up to 100%
21 are available under the Audit Policy. These criteria are (1)
22 discovery of the violation(s) through an environmental audit
23 or due diligence; (2) voluntary disclosure; (3) prompt
24 disclosure; (4) discovery and disclosure independent of
25 government or third party plaintiff; (5) correction and
26 remediation; (6) prevent recurrence; (7) no repeat

1 violations; (8) other violations excluded; and

2 (9) cooperation.

3 19. Complainant has determined that Respondent has satisfied all
4 of the criteria under the Audit Policy and thus qualifies for
5 the elimination of civil penalties in this matter.

6 Accordingly, the civil penalty assessed in this matter is
7 zero (\$0) dollars.

8 20. Complainant's finding that BAE Systems has satisfied the
9 criteria of the Audit Policy is based upon documentation that
10 BAE Systems has provided to establish that it satisfies these
11 criteria. Complainant and Respondent agree that, should any
12 material fact upon which Complainant relied in making its
13 finding subsequently prove to be other than as represented by
14 BAE Systems, this CAFO may be voided in whole or in part.

15 21. Nothing in this CAFO modifies, affects, exempts or relieves
16 Respondent's duty to comply with all applicable provisions of
17 EPCRA and other federal, state or local laws and permits. In
18 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves
19 Respondent's liability for federal civil penalties for the
20 violations and facts specifically alleged in this CAFO.

21 Nothing in this CAFO is intended to or shall be construed to
22 resolve (i) any civil liability for violations of any
23 provision of any federal, state, or local law, statute,
24 regulation, rule, ordinance, or permit not specifically
25 alleged in this CAFO; or (ii) any criminal liability. EPA
26 specifically reserves any and all authorities, rights, and
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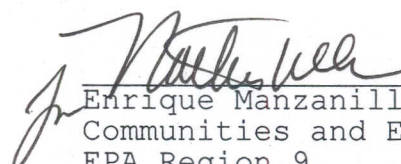
1 remedies available to it (including, but not limited to,
2 injunctive or other equitable relief or criminal sanctions)
3 to address any violation of this CAFO or any violation not
4 specifically alleged in this CAFO.

5 22. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),
6 this CAFO shall be effective on the date that the final order
7 contained in this CAFO, having been approved and issued by
8 either the Regional Judicial Officer or Regional
9 Administrator, is filed.

10 23. The provisions of this CAFO shall be binding upon Respondent,
11 its agents, successors or assigns. Respondent's obligations
12 under this Consent Agreement, if any, shall end when
13 Respondent has performed all of the terms of the Consent
14 Agreement in accordance with the Final Order. Complainant
15 and Respondent consent to the entry of the CAFO without
16 further notice.

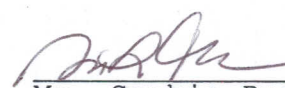
17 FOR COMPLAINANT:

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19
20 SEPT 25, 2008
21 Date


Enrique Manzanilla, Director
Communities and Ecosystems Division
EPA Region 9

22 FOR RESPONDENT:

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25 22 SEPT 08
26 Date


Ms. Sophia Rafatjah
Vice President and **Chief** Counsel
BAE Systems **Information and Electronic**
Systems Inc.

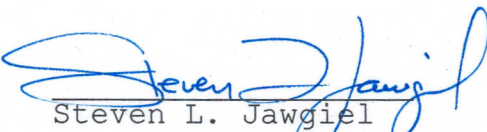
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FINAL ORDER

Complainant EPA Region 9 and Respondent BAE Systems Information and Electronic Systems Integration, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-09-2008- 0025) be entered.

09/29/08
Date


Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region 9

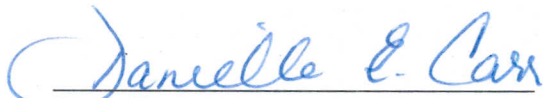
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CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"),
Docket Number EPCRA-09-2008- **00 25** was filed this day with the Regional Hearing Clerk,
U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that a true and
correct copy of the CAFO was sent to Respondent at the following address:

Ms. Sophia Rafatiah
VP & Senior Counsel
BAE Systems, Inc.
6500 Tracor Lane – ATX28026
Austin, TX 78725

Certified Mail No: 7007 3020 0000 9807 1101



Danielle Carr
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

SEP 30 2008

Date